

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 167 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

KHEMABHAI HIRABHAI PATEL

Versus

BHARTI ZAVERI

Appearance:

MR KG VAKHARIA for Petitioner
MR SUDHANSU PATEL, AGP for Respondent No. 1
NOTICE SERVED for Respondents No. 2, 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 25/02/2000

ORAL JUDGEMENT

By means of filing this petition under Article
226 of the Constitution, the petitioner has prayed to
issue a writ of prohibition or a writ of mandamus or any

other appropriate writ, order or direction to quash and set aside the notice issued by the Deputy Secretary (Appeal), Co.operation Department calling upon the petitioner to remain present on December 19, 1987 and show cause why order dated August 11, 1987 passed by Additional Registrar, Co-operative Societies (Appeal), Gujarat State, Gandhinagar be not set aside in exercise of suo-motu powers under section 155 of the Gujarat Co-operative Societies Act, 1961.

2. From the averments made in the petition, it is evident that Additional Registrar, Co-operative Societies (Appeal), Gujarat State, Gandhinagar has passed order dated August 11, 1987 in favour of the petitioner by which order dated July 10, 1986 passed by the District Registrar, Co-operative Societies, Himatnagar removing the petitioner from Executive Committee of the Nava Gam Ni Sahkari Mandli Ltd. Nava Revas, is set aside. On application being made by the respondents no.2 & 3, Deputy Secretary (Appeal), Co.operation Department decided to take the order of the Additional Registrar in suo-motu revision and, therefore, notice which is impugned in the present petition was issued to the petitioner. Thus, it becomes clear that the petitioner has filed petition challenging show-cause notice. In the State of U.P. vs. Shri Brahm Datt Sharma and another, AIR 1987 SC 943, it is ruled that when a show-cause notice is issued under a statutory provision, ordinarily the person concerned must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage, unless the notice is shown to have been issued palpably without any authority of law. What is emphasised by the Supreme Court is that the purpose of issuing show cause notice is to afford opportunity of hearing to the person concerned and once cause is shown, it is open to the competent authority to consider the matter in the light of the facts and submissions placed by the person concerned and only thereafter a final decision in the matter should be taken. The Supreme Court has ruled that interference by the Court before that stage would be pre-mature and High Court normally should not interfere with the matter which is at the show-cause notice stage. Though the petitioner has raised a point that Deputy Secretary (Appeal), Co.operation Department has no jurisdiction to exercise suo-motu powers against order passed by the Additional Registrar, Co-operative Societies, it is not necessary for me to go into the said question because this point as well as other points can be urged by the petitioner before the competent authority and the competent

authority will have to consider the same on merits.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs. It is clarified that the petitioner will be entitled to raise all the points mentioned in the petition as well as other additional points including the contention that the Deputy Secretary (Appeal), Co.operation Department has no jurisdiction to exercise suo-motu powers under section 155 of the Gujarat Co-operative Societies Act, 1961 and the points which may be urged by the petitioner shall be considered on merits and in accordance with law.

(patel)